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RE: YERAZUNIS, et al. - Serial No. 09/150,360
Att'y Docket No. 3140-25CIP/1159.41346CP6
Examiner V. Le - Group 2713


SUBMISSION OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant hereby submits the attached PRE-APPEAL BRIEF REQUEST FOR REVIEW (3 pages) and REASONS FOR REQUESTING PRE-APPEAL BRIEF CONFERENCE REVIEW (5 pages) for entry in the above-noted application.

CERTIFICATE OF TRANSMISSION:

I hereby certify that the attached PRE-APPEAL BRIEF REQUEST FOR REVIEW (3 pages) and REASONS FOR REQUESTING PRE-APPEAL BRIEF CONFERENCE REVIEW (5 pages) are being **FORMALLY TRANSMITTED** via the USPTO Main Facsimile No. 571-273-8300 on September 8, 2005.


Stacey Keaton

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Client No. MERL-1197-CIP

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of :
YERAZUNIS et al.

:Group Art Unit: 2713

Serial No. 09/150,360

:Examiner: V. Le

Filed: September 9, 1998

:
: **EXPEDITED**
: **PROCESSING**
: **REQUESTED**

For: VIDEO RECORDING DEVICE FOR TARGETING WEAPON

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP BOX AF
Commissioner for Patents
P.O. BOX 1450
Alexandria, VA 22313-1450

September 8, 2005

Sir:

This filing is submitted further to:

- (1) the Notice of Appeal filed **June 7, 2000**,
- (2) the Remand of Appeal issued by the Board of Patent Appeals and Interferences (BPAI) on **December 19, 2003**, which required further immediate action by the Examiner (the application being designated as "special"), and
- (3) the Non-Final Official Action issued on **April 28, 2005** (i.e. over 16 months after the BPAI Remand), which responds to the Remand by reopening prosecution and rejecting all claims on new grounds.

Applicant hereby requests review of the non-final rejection in the above-identified application.

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No amendments are being filed with this request.

While this request is not being filed with a Notice of Appeal, it is being filed in view of the Notice of Appeal filed on **June 7, 2000**, the Remand of Appeal issued on

December 19, 2003, and the Applicant's current intention to file for a Request for Restatement of the Appeal in response to the Non-Final Official Action issued on **April 28, 2005**.

The filing of the Request for Restatement of the Appeal, in response to the non-final Official Action issued on **April 28, 2005**, will require the preparation and filing of a Supplemental Appeal Brief addressing the asserted new grounds for rejection of all claims. Accordingly, it is respectfully submitted that a review, at this time, of the legal and factual basis of the rejections set forth in the Non-Final Official Action issued on **April 28, 2005**, under the New Pre-Appeal Brief Conference Pilot Program, will spare Applicant the added time and expense of preparing a Supplemental Appeal Brief, if the panel review determines the rejections are improper.

Therefore, it respectfully requested that a review of the legal and factual basis of the rejections set forth in the Non-Final Official Action issued on **April 28, 2005** under the New Pre-Appeal Brief Conference Pilot Program be undertaken.

The review is requested for the reasons stated on the attached 5 sheets.

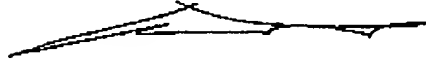
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I am attorney acting under 37 CFR 1.34.

Respectfully Submitted,

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Reasons for Requesting Pre-Appeal Brief Conference Review

Independent claim 36 stands rejected as obvious over Katayama.

Independent claim 36 requires, *inter alia*, a controller capable of transferring the data stored in the memory to the non-volatile memory based on the detection of the occurrence by the sensor.

Katayama is directed to recording images of an area on semiconductor memory (DRAM). The recording is activated and/or deactivated based on a change in the images of the area being recorded (e.g. if an image of the area is darker or lighter than a prior image etc.). Katayama generally discloses that the recorded images are transferred from the semiconductor memory to a frame buffer before display.

While Katayama discloses deactivating and arguably thereby preserving recorded images on a semiconductor memory in response to a change in the images themselves (i.e. arguably preserves recorded images based on a difference in two recorded images), Katayama lacks any suggestion of a need for preserving recorded images on the basis of some non-image related event.

Furthermore, while Katayama generally discloses that the preserved images are transferred from the semiconductor memory to a frame buffer for display, there is nothing in Katayama's disclosure to suggest that the frame buffer is a non-volatile memory, and it is pure speculation to conclude that it is.

The term "buffer" is generally defined in the computer sciences to be a device for temporarily storing data. For example, "a device or storage area [memory] used to store data temporarily ..." (see www.computerdictionary.info/computer-term-details/Buffer) or "part of a RAM used for temporary storage of data..." (see: www.hyperdictionary.com/search.aspx?define=buffer). Accordingly, if anything, Katayama suggest the transfer of data from one volatile memory (a semiconductor DRAM) to another volatile memory (a buffer).

Further still, even if Katayama could somehow be construed to teach that the transfer to the buffer was done to preserve the images stored in the semiconductor memory, Katayama fails to suggest that the transfer of data from is based on the detection of the occurrence by a sensor.

Indeed, the Examiner's reliance on Katayama's disclosure in column 3, line 64, through column 4, line 12, as disclosing the recited controller, clearly ignores explicit limitations of claim 36.

Independent claims 1 and 16 stand rejected as obvious over Black in view of Katayama.

Independent claim 1 requires, *inter alia*, that, in response to the detection of a weapon discharge sensor output signal, video image data corresponding generally to an area surrounding a target line and to at least some of the video image data stored preceding and subsequent to the weapon discharge sensor output signal, which in turn corresponds to at least one firing of the weapon, be preserved in a semiconductor memory within a video recording device.

Black is directed to a video recording device having a gunstock and support structure on which a hand-held video camera recorder, using videotape,

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can be mounted. Part of the gunstock structure is adapted to allow the user to conveniently activate the on/off video recording switch of the video camera for sequentially starting and stopping the recording. A light trigger is provided on the gunstock to activate a light visible through the viewfinder when the trigger is pulled. The light is simultaneously recorded on the videotape. Thus, Black is directed to recording a flash of light as part of the video image to mark the recorded image and thereby indicate the occurrence of a triggering event.

While Black discloses manually turning off the video recording switch of the video camera to stop the recording and arguably thereby preserve the recorded images on video film, Black does not disclose that the video recording switch is turned off in response to an event, let alone to the detection of an output signal of an event sensor. Thus, Black fails to suggest the required preserving of the recorded video image data in response to the detection of a weapon discharge sensor output signal. Additionally, there is nothing in Black's disclosure to suggest there is any need for such a feature.

Katayama is directed to recording images of an area on semiconductor memory (DRAM). The recording is activated and/or deactivated based on a change in the images of the area being recorded (e.g. if an image of the area is darker or lighter than a prior image etc.). Katayama generally discloses that the recorded images are transferred from the semiconductor memory to a frame buffer before display.

It is initially noted that it is unclear why one would be motivated to modify Black to preserve recorded image data based on a change in images of an area, as taught by Katayama (i.e. using Katayama's video trigger circuit 46). In this regard, Black explicitly discloses another technique for preserving recorded images which allows the shooter to turn-off the video recording switch of the video camera to stop the recording (arguably preserve the recorded video) at the shooter's own discretion. This in turn provides the shooter with greater flexibility than the technique disclosed by Katayama, and appears to be necessary to meet Black's objectives (i.e. to allow spectators to monitor the shooting action observed by a contestant in a shooting contest by playing a recording of the shooting action). Indeed, it appears that the proposed modification would violate a principle of operation of Black (i.e. manual user control of the sequential starting and stopping of the video recording), since Katayama's video trigger circuit 46 automatically sequential starts and stops the video recording based on changes in the recorded images.

Furthermore, it is entirely unclear how, or even if, the video trigger circuit 46 disclosed by Katayama could be adapted to both preserve recorded image data based on a change in images of an area and still ensure that all of the shooting action observed by a contestant in a shooting contest is recorded. For example, as taught by Katayama, video trigger circuit 46 can deactivate recording, and thereby arguably preserve recorded image data, based on one image of the imaged area (e.g. a shooting target) becoming darker than a prior image of that area. Thus, how could one be assured that recording would not be deactivated when a cloud blocks the sun during the contest?

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There is nothing in the official action to reflect any reasonable consideration of motivation, let alone a rationale as to how Katayama's video trigger circuit 46 could be adapted in view of Black's objectives and principles of operation to meet the present invention's claimed limitations. Additionally, the Examiner has failed to identify any disclosure (because no such disclosure exist) in either reference to suggest the proposed a modification.

Furthermore, while Katayama discloses deactivating and arguably thereby preserving recorded images on a semiconductor memory, according to the explicit teachings of Katayama this is done in response to a change in the images themselves (i.e. arguably preserves recorded images based on a difference in two recorded images). Thus, Katayama, like Black, lacks any suggestion that recorded images should or could be preserved in response to detection of a weapon discharge sensor output signal.

Indeed, the Examiner's reliance on Black's disclosure in column 3, lines 11-15, and column 7, lines 39-47, and Katayama's disclosure in column 4, line 23-31, as disclosing the recited preservation of digital data representative of the video image data by controller, clearly ignores explicit limitations of claim 1.

More particularly, the relied upon disclosure in columns 3 and 7 of Black describes the initial recording of images, and has nothing whatsoever to do with preservation of data representative of the video image data. While the relied upon disclosure in column 4 of Katayama arguably describes the preservation of the recorded images based on detection of a change in a static scene, it lacks any teaching or suggestion of preserving stored data representative of the video image data (recorded images) in response to detection of a weapon discharge sensor output signal.

Independent claim 16 requires, *inter alia*, a controller capable (i) of causing the storage of digital data representative of video image data within semiconductor memory at predetermined times both before and after the generation of a weapon discharge output signal by a weapon discharge sensor, and (ii) of preserving selected digital data stored in the semiconductor memory in response to a weapon discharge sensor output signal.

Accordingly claim 16 is believed to be distinguishable on grounds similar to those discussed above with respect to claim 1.

Additionally, claim 16 further requires that the digital data stored in the semiconductor memory, which is preserved in response to a weapon discharge sensor output signal, be selected digital data.

While Black discloses turning off the video recording switch of the video camera to stop the recording and arguably thereby preserve the recorded images on video film, Black preserves all the recorded images on video film by turning off the video recording switch. Accordingly, Black lacks any suggestion that selected stored digital data representative of the video image data (e.g. recorded images) should or could be preserved.

Similarly, while Katayama discloses deactivating recording, and arguably thereby preserving recorded images on a semiconductor memory, in response to a change in the images themselves (i.e. arguably preserves recorded images based on a difference in two recorded images), Katayama, like Black, lacks any

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suggestion that selected recorded images should or could be preserved (i.e. to the extent Katayama preserves recorded images, it does not preserve selected stored digital data representative of the video image data (recorded images) stored in the semiconductor memory).

Here again for reasons which should be clear from the discussion above, the Examiner's reliance on Black's disclosure in column 3, lines 11-15, and column 7, lines 39-47, and Katayama's disclosure in column 4, line 23-31, as disclosing the recited preservation of selected digital data representative of the video image data by controller, clearly ignores explicit limitations of claim 16.

Exemplary Dependent Claims

Dependent claim 8 stands rejected as obvious over Black in view of Katayama.

Dependent claim 8 requires storing the video image data associated with each discharge of the weapon in a portion of the semiconductor memory assigned for the respective discharge, and preserving selected video image data associated with each discharge of the weapon.

As discussed above, neither Black nor Katayama suggest that selected stored video image data should or could be preserved.

Furthermore, the Examiner's reliance on Katayama's teachings in column 4, line 25-31, as disclosing the recited storing of the video image data associated with each discharge of the weapon in a portion of the semiconductor memory assigned for the respective discharge, is mistaken. The cited teachings of Katayama have nothing whatsoever to do with the storage of video image data associated with each event in a portion of semiconductor memory assigned for the respective event. Hence, the rejection of claim 8 clearly ignores explicit limitations of the claim.

Dependent claim 9 also stands rejected as obvious over Black in view of Katayama.

Dependent claim 9 requires that the portion of semiconductor memory assigned for the storage of video data associated with each successive discharge of the weapon is smaller than the portion associated with the prior discharge of the weapon.

The Examiner's reliance on Katayama's teachings in column 4, line 27-28, as disclosing the recited limitation that the portion of semiconductor memory assigned for storage of video data associated with each successive discharge of the weapon is smaller than the portion associated with the prior discharge of the weapon, is mistaken. The cited teachings of Katayama only disclose that image frames before and after an event may be stored and have nothing whatsoever to do with portions of storage being assigned to different events. Hence, the rejection of claim 9 clearly ignores explicit limitations of the claim.

Dependent claim 13 also stands rejected as obvious over Black in view of Katayama.

Dependent claim 13 requires repeatedly storing video image data comprising video frames within a first semiconductor memory, and in response to each one of the weapon discharge sensor output signals, reading selected video

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image data from the first semiconductor memory and writing the selected video image data to a second non-volatile semiconductor memory.

As discussed above, neither Black nor Katayama suggest (i) preserving selected stored video image data or (ii) reading video image data from one semiconductor memory and writing such data to another non-volatile semiconductor memory in response to an event sensor output signals.

Furthermore, the Examiner's reliance on Katayama's disclosure in column 3, line 64, through column 4, line 7, clearly ignores the explicit limitations of claim 13.

Dependent claim 25 stands rejected as obvious over Black in view of Katayama and Andersson.

Dependent claim 25 requires that the semiconductor memory be at least one dynamic random access memory and a non-volatile memory, and that the controller be capable of storing the digital data within the dynamic random access memory periodically and, in response to the weapon discharge sensor output signal, causing selected digital data stored within the dynamic random access memory to be read from the dynamic random access memory and stored within the non-volatile memory.

As discussed above, neither Black nor Katayama suggest (i) causing selected stored video image data to be read from one semiconductor memory and written to another non-volatile semiconductor memory in response to an event sensor output signal. Andersson is only applied for its teachings of a microphone for detecting a weapon discharge and therefore does not cure the deficiency in the base combination.

Thus, here again, the Examiner has clearly ignored the explicit limitations of claim 25.

Dependent claim 39 stands rejected as obvious over Black in view of Katayama and Golubic.

Dependent claim 39 requires a portable housing having the sensor, the memory, the non-volatile memory, and the controller disposed therein.

Golubic teaches an image recording unit housing 16 which is separate from the control unit 18. Thus, Golubic necessarily lacks a portable housing having both memory for recording images, and a controller as required by claim 39.

Indeed, the Examiner's reliance on the disclosure in column 4, lines 5-23, is mistaken, since the disclosure lacks any teaching of the recited combination of items housed within a housing.

Thus, here again, the Examiner has clearly ignored the explicit limitations of claim 39.

The rejections of dependent claims 10 and 11, as obvious over Black in view of Katayama and Fielder, and dependent claims 14, 29, 33 and 34, as obvious over Black in view of Katayama and Scerbo, clearly ignore explicit limitations of each of these claims for the reasons set forth in the Appeal Brief filed on August 7, 2000.